IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA, Plaintiff, v. MARSHA T. MAKLER, a/k/a MARSHA T. LASTER, Defendant.	:	CIVIL ACTION NO. 00-239

MEMORANDUM

ROBERT F. KELLY, J. AUGUST 11, 2000

In this case the United States of America, on behalf of its agency, the Department of Education ("DOED"), seeks the recovery of four defaulted student loans from the Defendant, Marsha T. Makler, a/k/a Marsha T. Laster ("Defendant"). To secure said loans, Defendant executed promissory notes made by Educaid and guaranteed by the Pennsylvania Higher Education Assistance Agency ("PHEAA") for $1,000 on August 28, 1969, for $1,000 on August 7, 1970, for $1,500 on September 11, 1971, and for $1,500 on September 23, 1972, all at 7% interest.

Defendant defaulted on her obligation to make payments in accordance with the terms of the notes on October 25, 1975, and Educaid filed a claim on the guarantee. The guarantee agency paid the lender its claim of $4,674.64 and then presented a claim to the United States under its reinsurance agreement. The United States paid the insurance claim of the guarantor and took assignments of the notes on April 20, 1995. Since that date, the

United States has received no payments. As of November 27, 1999, the defendant owed $7,386.34, with interest accruing at the daily rate of $.84.

On March 30, 2000, the United States filed a Request for Judgment By Default, which was entered by the Clerk of Court on that day. Subsequently, the United States learned that Defendant had filed an Answer to the Complaint prior to the entry of default and moved to vacate default judgment and to enter summary judgment. On June 2, 2000, the Court vacated default judgment. Then, on June 7, 2000, the Court denied Plaintiff's Motion for Summary Judgment without prejudice, struck the Defendant's Answer, and extended the time for Defendant to file an appropriate answer.[1]

Now pending before this Court is the Renewed Motion of the United States for Summary Judgment pursuant to Rule 56 of Federal Rules of Civil Procedure. For the following reasons, Plaintiff's Renewed Motion for Summary Judgment will be granted.

I. STANDARD OF REVIEW

"Summary judgment is appropriate when, after considering the evidence in the light most favorable to the nonmoving party, no genuine issue of material fact remains in dispute and `the moving party is entitled to judgment as a matter

[1] Defendant's new Answer, filed on June 12, 2000, is identical to the answer previously struck, except that it is now signed by the Defendant instead of her husband.

of law.'" Hines v. Consolidated Rail Corp., 926 F.2d 262, 267 (3d Cir. 1991) (citations omitted). "The inquiry is whether the evidence presents a sufficient disagreement to require submission to the jury or whether it is so one sided that one party must, as a matter of law, prevail over the other." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249 (1986). The moving party carries the initial burden of demonstrating the absence of any genuine issues of material fact. Big Apple BMW, Inc. v. BMW of North America, Inc., 974 F.2d 1358, 1362 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Once the moving party has produced evidence in support of summary judgment, the nonmovant must go beyond the allegations set forth in its pleadings and counter with evidence that demonstrates there is a genuine issue of fact for trial. Id. at 1362-63. "A dispute regarding a material fact is `genuine' if the evidence is such that `a reasonable jury could return a verdict for the non-moving party.'" Armbruster v. Erie Civic Center Auth., 937 F. Supp. 484, 488 (W.D. Pa. 1995), aff'd, 100 F.3d 946 (3d Cir. 1996).

II. DISCUSSION

In response to the motion for summary judgment filed by the United States, Defendant makes the following two arguments: (A) a factual dispute exists based on Defendant's assertion that she has made regular payments on the alleged indebtedness and the United States has failed and refused to give her credit for the

payments; and (B) collection of any remaining student loans would be barred by the statute of limitations. (Def.'s Mem. at 1.) Each of these arguments will discussed in turn.

A. Alleged Payments on Indebtedness

First, Defendant argues that she has made regular payments on her indebtedness and that the Government has failed and refused to give her credit for the payments which have been made. In doing so, Defendant does not deny receiving the loans or signing the promissory notes, but, instead, has argued that there is a dispute regarding whether payments were actually made. However, attached to Plaintiff's Motion for Summary Judgment is a copy of a sworn certificate of indebtedness, an affidavit from an individual responsible for the maintenance and custody of records of the U.S. Department of Education, San Francisco, California, attesting to the fact that "[s]ince assignment of the loan, the Department has received a total of $0.00 in payments . . . ." (Government Ex. A.) Such evidence is sufficient to meet the government's burden of proof at the summary judgment stage. See United States v. Brooks, Civ. A. No. 97-5779, 1998 WL 32563, *1-2 (E.D. Pa. Jan. 29, 1998).

On July 26, 2000, upon consideration of the Response of Defendant to the Renewed Motion of the United States for Summary Judgment, this Court issued an Order directing that Defendant file a sworn affidavit reflecting the statements made in her

Memorandum of Law with respect to regular payments made on the alleged indebtedness, in accordance with Federal Rule of Civil Procedure 56(e), or risk judgment being entered in favor of the Plaintiff. In response, Defendant filed an affidavit stating that the facts contained in her memorandum opposing Plaintiff's Motion for Summary Judgment, including the assertion that the defendant has made regular payments on the alleged indebtedness, are true and correct.

However, Rule 56(e) provides, in relevant part, the following:

> When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

FED. R. CIV. P. 56(e). Thus, "[a] non-moving party may not `rest upon mere allegations, general denials or . . . vague statements . . . ." Trap Rock Indus. v. Local 825, Int'l Union of Operating Eng'rs, 982 F.2d 884, 890 (3d Cir. 1992).

Here, although Defendant did file an affidavit, Plaintiff correctly points out that "[t]he Affidavit does not set forth the dates or amounts of any payments made by her but not credited by the government. In fact, the affidavit sets forth no

specific facts of any kind to refute those facts set forth in the government's Certificate of Indebtedness (Exhibit A)." (Pl.'s Reply Mem. of Law at 1.) Thus, Defendant has failed to meet her burden under Rule 56(e) of the Federal Rules of Civil Procedure.

B. Statute of Limitations

Next, Defendant asserts that this action is time-barred by the statute of limitations. However, it is well settled that the 1991 amendments to Section 484A(a) of the Higher Education Act of 1965 ("HEA") eliminated the defense of any limitation period for suits of this kind.[2] See Brooks, 1998 WL 32563 at *2; see also United States v. Doan, No. CIV. A. 96-6381, 1997 WL 83738, at *1 (E.D. Pa. Feb. 25, 1997); United States v. Collins, No. CIV. A. 92-1143, 1993 WL 52103, *3 (E.D. Pa. Feb. 24, 1993). Furthermore, Congress provided that the statute would have a retroactive effect. See Brooks, 1998 WL 32563 at *2; Doan, 1997 WL 83738 at *1; Collins, 1993 WL 52103 at *3. Accordingly, as a matter of law, the government is not barred by any limitation

[2] Defendant's argues to no avail that the "recent legislation plaintiff is trying to use to get around the expiration of the statute of limitations in this case is moot." (Def.'s Mem. at 1.) In support of her position, Defendant simply states that "[a]ny such law to become a law of the land would require an amendment to the Constitution, not merely an act of Congress." Id. In doing so, Defendant ignores the fact that one of Congress' purposes in amending the Higher Education Act of 1965 was "to ensure that obligations to repay loans and grant overpayments are enforced without regard to any Federal or State statutory, regulatory, or administrative limitation on the period within which debts may be enforced." 20 U.S.C. § 1091a(a)(1).

period.

For all of the above reasons, Plaintiff's Renewed Motion for Summary Judgment shall be granted. An Order will follow.

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ORDER

AND NOW, this 11th day of August, 2000, upon consideration of Plaintiff's Renewed Motion for Summary Judgment, and all responses thereto, it is hereby ORDERED that Plaintiff's Motion is GRANTED.

BY THE COURT:

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ROBERT F. KELLY, J.